



## UNITED STATES DEPARTMENT OF COMMERCE

## Patent and Trademark Office

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/243, 030 02/03/99 TOVEY

M 23164-1001-D

<input type="checkbox"/>	EXAMINER
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BROWDY AND NEIMARK  
624 NINTH STREET, N.W.  
STE. 300  
WASHINGTON, DC 20001-5303

HM12/0324

GOLDBERG, J	<input type="checkbox"/>	ART UNIT	PAPER NUMBER
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1614

DATE MAILED:

03/24/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. <b>09/243,030</b>	Applicant(s) <b>Tovey</b>
	Examiner <b>Jerome D. Goldberg</b>	Group Art Unit <b>1614</b>

Responsive to communication(s) filed on Feb 3, 1999.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 7 and 21-35 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 7 and 21-35 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 2 & 4

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1614

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 21-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Hayden et al. reference of record.

The Hayden et al. reference teaches the application interferon for treating rhinovirus infection and other “respiratory viral infections” (page 550, col. 1, line 1) employing a “one treatment ( $42.8 \times 10^6$  IV per treatment)” (page 544, col. 2, lines 1 and 2) “by intranasal drops” administration (Abstract, line 3). The reference does not teach oromucosal contact but it is well known that nose drops will contact the oromucosal. Accordingly, one skilled in this art would be motivated to treat viral infection of the claims in mammals with the prior art anti-viral interferon in the absence of a side-by-side comparison.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner J. D. Goldberg whose telephone number is (703) 308-4606. The examiner can normally be reached on Monday through Thursday from 9:00 a.m. to 3:00 p.m.

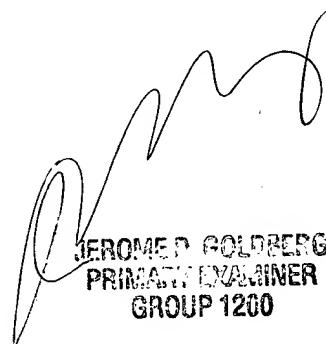
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Cintins, can be reached on (703) 308-4725. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556 or 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

J. Goldberg:jmr

March 23, 2000

  
JEROME P. GOLDBERG  
PRIMARY EXAMINER  
GROUP 1200